IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1038 OF 2005
IN
SUIT NO.4863 OF 1999

Mahasukhlal Manilal Shah ..Plaintiff.

V/s.

Bachubhai P. Parekh & Ors. ..Defendants.

And

Lajpatrai K. Vora & Anr. ..Respondents.

Mr.P.M.Shah for respondents.

Mr.K.M.Mody i/b J. Pathak & Co. for plaintiff.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 25, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings. This chamber summons is filed by third party praying for impleadment as defendant No.2 to 5 in the plaint on the assertion that applicants have been allotted bungalow, which was to be constructed by the partnership firm. Even so, in my opinion, applicant cannot be said to be either necessary or proper party in the suit pending between the plaintiff and defendants, which is essentially for dissolution of partnership firm. In such suit, grievance of the applicant cannot be dealt with. It

will be open to the applicant to take recourse to such other remedy, as may be permissible by law against the partnership firm and/or partners of the said firm, which allegedly allotted one bungalow to the applicant.

2. Counsel for the applicant however, relying on the clause (b) of Rule 3 of Order 1, contends that instead of requiring the applicant to file separate suit, relief to which the applicant is entitled, can be granted in the present suit, if impleaded as party defendant. I see no substance in this submission. Clause (b) of Rule 3 will have to be read in conjunction with the requirement postulated in clause (a)- that the proposed relief claimed by the Applicant should be in respect of or arising out of the same act or transaction or series of acts or transactions in relation to which the present suit for dissolution of partnership is filed. Accordingly, there is no substance in this application.

3. Hence rejected.